

APPENDIX A

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APPLE INC.

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10 UNITED STATES DISTRICT COURT
11 NORTHERN DISTRICT OF CALIFORNIA
12 SAN JOSE DIVISION

13
14 IN RE APPLE & AT&TM ANTI-TRUST
LITIGATION

CASE NO. C 07-5152 JW (PVT)

15 **APPENDIX IN SUPPORT OF DEFENDANT**
16 **APPLE INC.'S REPLY IN SUPPORT OF**
17 **MOTION FOR SUMMARY JUDGMENT ON**
18 **PLAINTIFFS' IPHONE OPERATING**
19 **SYSTEM VERSION 1.1.1 CLAIMS**

20 Date: April 26, 2010
21 Time: 9:00 AM
22 Place: Courtroom 8, 4th Floor
23 Judge: The Honorable James Ware
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APPENDIX A: PLAINTIFFS' VERSION 1.1.1-RELATED INJURIES

| PLAINTIFF | RCAC ALLEGATIONS | THE RECORD EVIDENCE |
|-----------|--|---|
| Lee | "Lee contacted Apple to repair his iPhone, but Apple refused to honor its warranty because Lee had (1) unlocked his iPhone, and (2) installed Third Party Apps." (§48 (emphasis added)). | <ul style="list-style-type: none"> Admitted at deposition point blank that the allegation was "false," and that he had not had a warranty claim denied by Apple. Admitted that that he "wasn't harmed by the—the 1.1.1 update[.]" even though he had jailbroken and unlocked an earlier iPhone. <i>See</i> Huseny Decl. ISO MSJ, Ex. E (Lee Dep. 56:1-2; 63:11-64:2) (emphases added). |
| Holman | "Holman is faced with the choice of foregoing an upgrade to iPhone operating software [v]ersion 1.1.1 ... or losing the Third Party Apps he currently uses." (§ 37 (emphasis added)). | <ul style="list-style-type: none"> Admitted at deposition this was false—he had in fact installed version 1.1.1 long before—in or about October 2007. Testified that he installed version 1.1.1 on multiple jailbroken and unlocked iPhones without any ill effect. <i>See id.</i> at Ex. M (Holman Dep. 45:5-12; 135:2-136:8; 150:1-152:21). |
| Smith | "His iPhone was disabled, malfunctioned, and/or his Third Party Apps were erased after downloading iPhone update Version 1.1.1. Smith contacted Apple to repair his iPhone, but Apple refused to honor its warranty because he had (1) unlocked his iPhone, and (2) installed Third Party Apps." (§ 47 (emphasis added)). | <ul style="list-style-type: none"> Admitted at deposition RCAC was false: Apple replaced his allegedly "bricked" iPhone, "no questions." Admitted Apple never denied him warranty replacements for seven iPhones, even though he "surely over hacked" some, "trick[ed]" Apple, and that Apple replaced an iPhone he "had frozen [him]self from jailbreaking." No allegations/evidence that he paid for any Third Party Apps or suffered damage as a result of Third Party Apps being erased. No allegations/evidence that any Third Party Apps were not backed up. No allegations/evidence that he ever sought Apple to compensate him for any "damage" to Third Party Apps. No allegations/evidence that any "delay" receiving a replacement iPhone caused injury. <i>See id.</i> at Ex. F (Smith Dep. 72:3-9; 88:7-22; 92:9-18; 107:4-109:17; 113:21-114:13; 121:19-122:2; 128:7-129:9; 137:14-141:1) (emphasis added). |

| PLAINTIFF | RCAC ALLEGATIONS | THE RECORD EVIDENCE |
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| Sesso | “His iPhone was bricked, that is, disabled, and his Third Party Apps were erased after he downloaded iPhone update [v]ersion 1.1.1. Sesso contacted Apple to repair his iPhone, but Apple refused to honor its warranty because he had (1) unlocked his iPhone, and (2) installed Third Party Apps.” (¶56 (emphasis added)). | <ul style="list-style-type: none"> Admitted at deposition this was false: he immediately received a replacement Phone after 1.1.1 was installed at an Apple store. Claimed to have an unknown quantity of apps on his iPhone; spent \$70 to unlock iPhones but had deleted many apps prior to 1.1.1. No allegations/evidence that any Third Party Apps were not backed up. No allegations/evidence that he ever sought Apple to compensate him for any “damage” to Third Party Apps. No allegations/evidence that any “delay” receiving a replacement iPhone caused injury. <i>See id.</i> at Ex. O (Sesso Dep. 66:12-72:14; 74:14-75:25; 77:22-79:6). |
| Kliegerman | “[D]ownloaded Apple’s Version 1.1.1 operating system on two of his iPhones ... [he] has declined to download Third Party Apps or to unlock his SIM card because he is fearful that Apple’s imbedded malicious codes in the update will damage or permanently disable his iPhone...” (¶45 (emphases added)). | <ul style="list-style-type: none"> Affirmed at deposition that his iPhones were not damaged by 1.1.1 and that Apple never had occasion to deny related warranty service on his iPhones. Admitted that at least one of his iPhones had in fact been unlocked, to no ill effect, even though he had downloaded version 1.1.1. <i>See id.</i> at Ex. N (Kliegerman Dep. 103:21-104:2, 106:19-107:9). |
| Rivello | No allegations regarding version 1.1.1 (¶ 46) | <ul style="list-style-type: none"> Affirmed at deposition that she had never been harmed by iPhone OS software updates, including 1.1.1, and never had occasion to present warranty claims to Apple. <i>See id.</i> at Ex. K (Rivello Dep. 41:10-42:8). |
| Morikawa | No allegations regarding version 1.1.1 (¶¶ 52-53). | <ul style="list-style-type: none"> Affirmed at deposition that he had never been harmed by iPhone OS software updates, including 1.1.1, and never had occasion to present any warranty claims to Apple. <i>See id.</i> at Ex. L (Morikawa Dep. 80:8-81:3). |

| PLAINTIFF | RCAC ALLEGATIONS | THE RECORD EVIDENCE |
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| Macasaddu | <p>“iPhone was disabled, malfunctioned, and/or his Third Party Apps were erased after downloading iPhone update Version 1.1.1. Macasaddu contacted Apple to repair his iPhone, but Apple refused to honor its warranty because he had (1) unlocked his iPhone, or (2) installed a Third Party App. (§ 49 (emphasis added)).</p> | <ul style="list-style-type: none"> ▪ Maintained that Apple refused to provide a replacement iPhone, and that that he never again had a working iPhone after 9/27/07. ▪ Incontrovertible evidence establishes that he received a replacement iPhone in October 2007 and it was registered and activated on his ATTM cellular phone line until late 2008. ▪ Claimed to have several Third Party Apps on his iPhone for which he had spent \$1-\$2 and were backed up. ▪ No allegations/evidence that he sought compensation for any “lost” third party apps. ▪ No allegations/evidence that any “delay” receiving a replacement iPhone caused injury. ▪ <i>See id.</i> at Ex. P (Macasaddu Dep. 81:21-23; 92:2-11; 106:21-107:5; 118:8-11; 120:8-18; 141:8-142:4) and Mahone-Gonzalez Dec. Ex. B. |

Dated: April 5, 2010

Respectfully submitted,

LATHAM & WATKINS LLP

By /s/ Sadik Huseny
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